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STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL

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IN RE: PUBLIC SESSION

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HELD AT: 101 South Broad Street  
Trenton, NJ

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HELD ON: Thursday, December 18, 2008

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REPORTED BY: JUSTIN DAVIS

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CLASS ACT REPORTING AGENCY

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Registered Professional Reporters

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PRESENT:

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COUNCIL MEMBERS:

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ROBIN BERG TABAKIN, Chairwoman

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KATHRYN FORSYTH, Designee for DOE

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DAVID FLEISHER, Secretary

6

JANICE KOVACH, Designee for DCA

7

8

COUNCIL STAFF:

9

JYOTHI PAMIDIMUKKALA, Resource Manager

10

SHERIN KEYS, Case Manager

11

JOHN STEWART, In-Camera Specialist

12

ELIZABETH ZIEGLER-SEARS, Staff Attorney

13

DARA LOWNIE, Senior Case Manager

14

GINA OROSZ, Outside Counsel

15

DEBRA ALLEN, DAG

16

BRIGITTE HAIRSTON, Secretary

17

KARYN GORDON, Acting Executive Director

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FRANK CARUSO, Case Manager

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KELLEY LAKE, Outside Counsel

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0005

1 (Whereupon, the proceeding  
2 commenced at 9:46 a.m.)  
3 CHAIRWOMAN BERG TABAKIN: This meeting was  
4 called pursuant to the Open Public Meeting Act.  
5 Notices of this meeting were faxed to the Newark  
6 Star-Ledger, Trenton Times, Courier Post of Cherry  
7 Hill, the Secretary of State, and E-mailed to the  
8 New Jersey Foundation for Open Government December  
9 15, 2008. Proper notice having been given, the  
10 secretary is being directed to include this  
11 statement in the minutes of the meeting.  
12 In the event of a fire alarm activation,  
13 please exit the building following the exit signs  
14 located within the conference rooms and throughout  
15 the building. The exit signs will direct you to  
16 the two fire evacuation stairways located in the  
17 building. Upon leaving, please follow the fire  
18 wardens which can be located by the yellow  
19 helmets. Please follow the flow of traffic away  
20 from the building. Please rise for the Pledge of  
21 Allegiance.  
22 (Whereupon, the Pledge of  
23 Allegiance was recited.)  
24 CHAIRWOMAN BERG TABAKIN: Roll call.  
25 MS. HAIRSTON: Robin Berg Tabakin?

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1 CHAIRWOMAN BERG TABAKIN: Yes.  
2 MS. HAIRSTON: Janice Kovach is late.  
3 Kathryn Forsyth?  
4 MS. FORSYTH: Yes.  
5 MS. HAIRSTON: David Fleisher?  
6 MR. FLEISHER: Here.  
7 CHAIRWOMAN BERG TABAKIN:  
8 CHAIRWOMAN BERG TABAKIN: Whereas,  
9 N.J.S.A. 10:4-12 permits a public body to go into  
10 closed session during a public meeting; and whereas  
11 the Government Records Council has deemed it  
12 necessary to go into closed session to discuss  
13 certainly matters which are exempt to public  
14 discussion under the Open Public Meetings Act, and,  
15 whereas, the regular meeting of the Council will  
16 reconvene at the conclusion of the closed meeting.  
17 Now; therefore, be it resolved, that the  
18 Council will convene in closed session to receive  
19 legal advice and discuss anticipated litigation, in  
20 which the Council may become a party pursuant to  
21 N.J.S.A. 12.B7 in the following matters:  
22 One, request for Advisory Opinion from  
23 Frank P. Cavallo, Esquire, Parker McCay, P.A.  
24 Two, John Paff versus Borough of  
25 Lavallette Ocean, 2000-209.

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1 Three, Gill versus Department of Banking  
2 and Insurance. Appellate Opinion, decided  
3 11/28/2008, A-0886-07T1.  
4 Four, Bart versus City of Paterson Housing  
5 Authority. Appellate Opinion decided 11/21/2008  
6 A-85826-06T1.  
7 Five, NJFOG versus GRC, Docket  
8 No. MER-L-1858-08.  
9 Six, Edward Oskay versus NJ State Parole  
10 Board, 2008-53. Be it further resolved that the  
11 Council will disclose to the public the matters  
12 discovered or determined in closed session, as soon  
13 as possible, after the final decisions are issued  
14 in the above cases.  
15 Do I have a motion to adopt?  
16 MS. FORSYTH: So moved.  
17 MS. KOVACH: Second.  
18 MS. HAIRSTON: Robin Berg Tabakin?  
19 CHAIRWOMAN BERG TABAKIN: Yes.  
20 MS. HAIRSTON: Janice Kovach?  
21 MS. KOVACH: Yes.  
22 MS. HAIRSTON: Kathryn Forsyth?  
23 MS. FORSYTH: Yes.  
24 MS. HAIRSTON: David Fleisher?  
25 MR. FLEISHER: Yes.

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1 (Whereupon, the Council went  
2 into closed session.)  
3 (Whereupon, proceedings  
4 resumed at 10:46 a.m.)

5 CHAIRWOMAN BERG TABAKIN: Could I have a  
6 motion to come back into open session?  
7 MS. FORSYTH: So moved.  
8 MS. KOVACH: Second.  
9 MS. HAIRSTON: Robin Berg Tabakin?  
10 CHAIRWOMAN BERG TABAKIN: Yes.  
11 MS. HAIRSTON: Janice Kovach?  
12 MS. KOVACH: Yes.  
13 MS. HAIRSTON: Kathryn Forsyth?  
14 MS. FORSYTH: Yes.  
15 MS. HAIRSTON: David Fleisher?  
16 MR. FLEISHER: Yes.  
17 (Whereupon, the Council resumed  
18 in open session.)  
19 CHAIRWOMAN BERG TABAKIN: Approval of the  
20 minutes for the closed session of November to be  
21 accepted.

22 MS. FORSYTH: So moved.  
23 MR. FLEISHER: Second.  
24 MS. HAIRSTON: Robin Berg Tabakin?  
25 CHAIRWOMAN BERG TABAKIN: Yes.

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1 MS. HAIRSTON: Janice Kovach?  
2 MS. KOVACH: Yes.  
3 MS. HAIRSTON: Kathryn Forsyth?  
4 MS. FORSYTH: Yes.  
5 MS. HAIRSTON: David Fleisher?  
6 MR. FLEISHER: Yes.  
7 CHAIRWOMAN BERG TABAKIN: Now, the open  
8 session in October in the transcript. I have one  
9 note, just for the record. On page 27 line 18, I  
10 recused myself from Ronald Pittore versus  
11 University of Medicine and Dentistry of New  
12 Jersey.  
13 So could I have a motion to accept the  
14 transcript as amended?

15 MS. KOVACH: So moved.  
16 MR. FLEISHER: Second.  
17 MS. HAIRSTON: Robin Berg Tabakin?  
18 CHAIRWOMAN BERG TABAKIN: Yes.  
19 MS. HAIRSTON: Janice Kovach?  
20 MS. KOVACH: Yes.  
21 MS. HAIRSTON: Kathryn Forsyth?  
22 MS. FORSYTH: Yes.  
23 MS. HAIRSTON: David Fleisher?  
24 MR. FLEISHER: Yes.  
25 CHAIRWOMAN BERG TABAKIN: I'm recusing

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1 myself from John Paff versus the Borough of  
2 Lavallette Ocean, 2007-209.  
3 (Whereupon, Chairwoman  
4 Berg Tabakin was recused.)  
5 MR. FLEISHER: John Paff versus Borough of  
6 Lavallette.  
7 MR. STEWART: The Executive Director  
8 respectfully recommends the Council find that:  
9 One, because the Custodian failed to

10 provide nine copies of the redacted and unredacted  
11 documents, and a legal certification, that the  
12 documents provided are the documents requested by  
13 the Council for the In-Camera inspection. The  
14 Custodian has not complied with the Council's June  
15 25, 2008 Interim Order.

16 Two, on the basis of the Council's  
17 determination in this matter, the Custodian shall  
18 comply with the Council's findings of the In-Camera  
19 examination, set forth in the above table, within  
20 five business days from receipt of this order, and  
21 provide certified conformation of compliance  
22 pursuant to N.J. Court Rules, 1969 R.1:4-4 2005, to  
23 the Executive Director.

24 MR. FLEISHER: Questions? I want to  
25 entertain a motion.

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1 MS. FORSYTH: Second.

2 MR. FLEISHER: Roll call, please.

3 MS. HAIRSTON: Robin Berg -- Janice

4 Kovach?

5 MS. KOVACH: Yes.

6 MS. HAIRSTON: Kathryn Forsyth?

7 MS. FORSYTH: Yes.

8 MS. HAIRSTON: David Fleisher?

9 MR. FLEISHER: Yes.

10 CHAIRWOMAN BERG TABAKIN: Shirlee Manahan  
11 versus Salem County, 2006-184.

12 MS. LOWNIE: The Executive Director  
13 respectfully recommends the Council find that this  
14 complaint should be dismissed, because the  
15 Complainant voluntarily withdrew her complaint from  
16 the Office of Administrative Law, via letter dated  
17 August 4, 2008.

18 CHAIRWOMAN BERG TABAKIN: Motion?

19 MR. FLEISHER: So moved.

20 MS. KOVACH: Second.

21 MS. HAIRSTON: Robin Berg Tabakin?

22 CHAIRWOMAN BERG TABAKIN: Yes.

23 MS. HAIRSTON: Janice Kovach?

24 MS. KOVACH: Yes.

25 MS. HAIRSTON: Kathryn Forsyth?

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1 MS. FORSYTH: Yes.

2 MS. HAIRSTON: David Fleisher?

3 MR. FLEISHER: Yes.

4 CHAIRWOMAN BERG TABAKIN: Christopher  
5 Serrone versus the New Jersey Department of  
6 Corrections, 2007- 117.

7 MS. KEYS: There is an edit to the  
8 citation for Bent versus Stafford Police  
9 Department, which appears on page 9, paragraph 1,  
10 and on page 6, 4th paragraph, where it states  
11 October, that should read Appellate Division.

12 The Executive Director respectfully  
13 recommends the Council find that:

14 Because the Complainant has failed to

15 identify the particular records sought, the  
16 Custodian has not unlawfully denied the Complainant  
17 access to items No. 1-5 of the Complainant's OPRA  
18 request.

19 Mag Entertainment, LLC versus Division of  
20 Alcoholic Beverage Control, Appellate Division,  
21 March 2005, and Bent versus Stafford Police  
22 Department, Appellate Division, October 2005.

23 Pursuant to N.J.A.C. 10A:33-3.2, items No.  
24 6-9 of the Complainant's OPRA request are not  
25 disclosable. Moreover, the Custodian has certified

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1 that no records responsive to request items No. 6-9  
2 exist; therefore, the Custodian has not unlawfully  
3 denied access to the requested records.

4 Newark Morning Ledger Co., publisher of  
5 the Star-Ledger versus Division of the State Police  
6 of the New Jersey Department of Law and Public  
7 Safety, Superior Court of New Jersey, Law Division  
8 2005.

9 Because the Complainant has failed to  
10 bring about the desired result; i.e., release of  
11 the records sought by filing this complaint, he is  
12 not a prevailing party, and is, therefore, not  
13 entitled to an award of reasonable attorney's fees  
14 pursuant to Appellate Division 2006. Further, an  
15 award of the attorney's fees is appropriate only to  
16 compensate an attorney, not to cover a  
17 Complainant's own copying, or other self-incurred  
18 expenses.

19 CHAIRWOMAN BERG TABAKIN: Motion?

20 MS. KOVACH: So moved.

21 MR. FLEISHER: Second.

22 MS. HAIRSTON: Robin Berg Tabakin?

23 CHAIRWOMAN BERG TABAKIN: Yes.

24 MS. HAIRSTON: Janice Kovach?

25 MS. KOVACH: Yes.

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1 MS. HAIRSTON: Kathryn Forsyth?

2 MS. FORSYTH: Yes.

3 MS. HAIRSTON: David Fleisher?

4 MR. FLEISHER: Yes.

5 CHAIRWOMAN BERG TABAKIN: Steven Hyman  
6 versus Jersey City Redevelopment Agency, Hudson  
7 County, 2007-117.

8 MR. CARUSO: I just want to note an edit  
9 on page 9. The footnote, number 5, has been  
10 removed. The Executive Director respectfully  
11 recommends the Council find that:

12 One, the Custodian's failure to respond in  
13 writing to the Complainant's OPRA request, either  
14 granting access, denying access, seeking  
15 clarification, or requesting an extension of time  
16 within the statutorily mandated seven business days  
17 result in a deemed denial of the Complainant's OPRA  
18 request, pursuant to Section 5.g. of OPRA. And  
19 Section 5.i., and Kelley versus Township of

20 Rockaway, GRC Complaint No. 2007-11, October 2007.  
21 Two, the Custodian certified that no  
22 financial records responsive to this complaint  
23 existed, but failed to do so immediately as is  
24 required by Section 5.e. of OPRA. And Herron  
25 versus Township of Montclair, GRC Complaint No.

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1 2006-178, February 2007; therefore, the Custodian  
2 has violated Section 5.e. of OPRA.

3 Three, because the Custodian, in this  
4 complaint, responded in writing to the Complainant  
5 stating that no records responsive to the request  
6 relevant to this complaint exist, and has certified  
7 that no records exist which are responsive to the  
8 request relevant to this complaint. The Custodian  
9 would have borne her burden of proving pursuant to  
10 Section 6 of OPRA, and Pusterhofer versus New  
11 Jersey Department of Education GRC Complaint No.  
12 2005-49, July 2005, had the Custodian responded in  
13 a timely manner.

14 Four, although the Complainant contends  
15 that the requested financial records should be  
16 maintained on file by the JCRA, the GRC has  
17 authority over which records a government agency  
18 must maintain pursuant to Section 7.b. Of OPRA.  
19 And Van Pelt versus Edison Township Board of  
20 Education, GRC Complaint No. 2007-179, January of  
21 2008.

22 Five, the Custodian failed to respond to  
23 the Complainant's October 2006 OPRA request until  
24 the 93rd business day after the receipt of the  
25 request. However, the Custodian certified that the

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1 delay took place as a result of the extensive  
2 search for responsive records.

3 Moreover, following extensive and ongoing  
4 verbal communication between the Custodian and  
5 Complainant, some records responsive were provided,  
6 and the Custodian certified that no additional  
7 records responsive exist; therefore, it is  
8 concluded that the Custodian's actions do not rise  
9 to the level of a knowing and willful violation of  
10 OPRA, and unreasonable denial of access under the  
11 totality of the circumstances.

12 However, the Custodian's unlawful denial  
13 of access appears negligent and heedless, since she  
14 is vested with the legal responsibility of granting  
15 and denying access in accordance with the law.

16 CHAIRWOMAN BERG TABAKIN: Motion?

17 MS. FORSYTH: So moved.

18 CHAIRWOMAN BERG TABAKIN: Second?

19 MS. KOVACH: Second.

20 MS. HAIRSTON: Robin Berg Tabakin?

21 CHAIRWOMAN BERG TABAKIN: Yes.

22 MS. HAIRSTON: Janice Kovach?

23 MS. KOVACH: Yes.

24 MS. HAIRSTON: Kathryn Forsyth?

25 MS. FORSYTH: Yes.  
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1 MS. HAIRSTON: David Fleisher?  
2 MR. FLEISHER: Yes.  
3 CHAIRWOMAN BERG TABAKIN: John Paff versus  
4 Warren County Prosecutor's Office, 2007-167.  
5 MS. LOWNIE: The Executive Director  
6 respectfully recommends that the Council accept the  
7 settlement as reached by parties at the Office of  
8 Administrative Law on July 29, 2008. No further  
9 adjudication is required.  
10 CHAIRWOMAN BERG TABAKIN: Thank you.  
11 MS. KOVACH: So moved.  
12 MR. FLEISHER: Second.  
13 MS. HAIRSTON: Robin Berg Tabakin?  
14 CHAIRWOMAN BERG TABAKIN: Yes.  
15 MS. HAIRSTON: Janice Kovach?  
16 MS. KOVACH: Yes.  
17 MS. HAIRSTON: Kathryn Forsyth?  
18 MS. FORSYTH: Yes.  
19 MS. HAIRSTON: David Fleisher?  
20 MR. FLEISHER: Yes.  
21 CHAIRWOMAN BERG TABAKIN: Martin O'Shea  
22 versus Madison Public School District, Morris  
23 County, 2007-185.  
24 MR. CARUSO: The Executive Director  
25 respectfully recommends the Council accept the  
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1 Administrative Law Judge's Initial Decision dated  
2 October 2, 2008. No further adjudication is  
3 required.  
4 CHAIRWOMAN BERG TABAKIN: Motion?  
5 MS. KOVACH: So moved.  
6 MS. FORSYTH: Second.  
7 MS. HAIRSTON: Robin Berg Tabakin?  
8 CHAIRWOMAN BERG TABAKIN: Yes.  
9 MS. HAIRSTON: Janice Kovach?  
10 MS. KOVACH: Yes.  
11 MS. HAIRSTON: Kathryn Forsyth?  
12 MS. FORSYTH: Yes.  
13 MS. HAIRSTON: David Fleisher?  
14 MR. FLEISHER: Yes.  
15 CHAIRWOMAN BERG TABAKIN: Martin O'Shea  
16 versus Township of West Milford, Passaic County,  
17 2007-237.  
18 MS. LOWNIE: This is a reconsideration of  
19 the Council's July 30, 2008 interim order. The  
20 Executive Director respectfully recommends the  
21 Council find that:  
22 One, pursuant to OPRA Section 6, Teeters  
23 versus DYFS, Appellate Division 2006, and Mason  
24 versus City of Hoboken and City Clerk of the City  
25 of Hoboken, N.J. Supreme Court 2008. The  
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1 complainant is a prevailing party and entitled to  
2 an award of a reasonable attorney fee. Thus, the  
3 Council denies the Custodian's Council's request

4 for reconsideration.  
5 Two, this complaint should be referred to  
6 the Office of Administrative Law for the  
7 determination of reasonable prevailing parties,  
8 attorney's fees, for the reasons set forth in the  
9 Council's July 30, 2008 interim order.

10 CHAIRWOMAN BERG TABAKIN: Motion?

11 MS. FORSYTH: So moved.

12 MR. FLEISHER: Second.

13 MS. HAIRSTON: Robin Berg Tabakin?

14 CHAIRWOMAN BERG TABAKIN: Yes.

15 MS. HAIRSTON: Janice Kovach?

16 MS. KOVACH: Yes.

17 MS. HAIRSTON: Kathryn Forsyth?

18 MS. FORSYTH: Yes.

19 MS. HAIRSTON: David Fleisher?

20 MR. FLEISHER: Yes.

21 CHAIRWOMAN BERG TABAKIN: Bartley Shrader  
22 versus Florence Township Board of Education,  
23 Burlington, 2007-265

24 MR. STEWART: Yes, I would like to note an  
25 edit on page 7. The February 21st entry was

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1 changed from 2007 to 2008; the package went to  
2 Council.

3 The Executive Director respectfully  
4 recommends the Council find that:

5 Because the Complainant's amended Denial  
6 of Access Complaint voluntarily withdraws all of  
7 the records relevant to the complaint, except for  
8 Item 5, and because the complainant materially  
9 altered Item 5 to assert a denial of access to  
10 records for which no underlying written OPRA  
11 request had been submitted, contrary to the  
12 provisions of N.J.S.A. 47:1A5.g., the complaint  
13 should be dismissed without any reasonable factual  
14 basis pursuant to OPRA Section 7.e.

15 Further, there is no denial of access  
16 verbally requested at the time the Complainant  
17 inspected those records originally requested,  
18 because the Custodian has certified that the  
19 records verbally requested, either do not exist, or  
20 were properly destroyed pursuant to the records  
21 retention schedule established by DARM for failed  
22 referendums.

23 CHAIRWOMAN BERG TABAKIN: I had a question  
24 on this one, which is: The first OPRA request was  
25 made August 16, 2007; the next OPRA request was

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1 made September 24, 2007; the Custodian responded  
2 October 1st. It appears that the Custodian  
3 responded after the seven days, the 7 day  
4 requirement, on the August request.

5 MR. STEWART: Yes, I did, or she did. The  
6 reason there is not a time limitation here, in this  
7 case, is because, in effect, it's a withdrawal.  
8 The net effect of what the Complainant did here was

9 to amend -- he wanted to amend his complaint. And  
10 when he amended his complaint, he withdrew all of  
11 the items in the complaint that he was asking for  
12 except for one, and that was Item 5, which he  
13 requested after he had observed records that made  
14 reference to those items.

15 So that's what he put in his amended  
16 complaint, but there was no underlying request,  
17 written request for that. All he made is a verbal  
18 request when he was in there looking at the  
19 records. So, in effect, we don't have a complaint  
20 within our jurisdiction, because it's been  
21 withdrawn.

22 CHAIRWOMAN BERG TABAKIN: Okay.

23 MR. STEWART: So to find a timeliness  
24 issue on a withdrawn complaint --

25 CHAIRWOMAN BERG TABAKIN: Thank you. Any

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1 other questions? Motion?

2 MS. FORSYTH: So moved.

3 MS. KOVACH: Second.

4 MS. HAIRSTON: Robin Berg Tabakin?

5 CHAIRWOMAN BERG TABAKIN: Yes.

6 MS. HAIRSTON: Janice Kovach?

7 MS. KOVACH: Yes.

8 MS. HAIRSTON: Kathryn Forsyth?

9 MS. FORSYTH: Yes.

10 MS. HAIRSTON: David Fleisher?

11 MR. FLEISHER: Yes.

12 CHAIRWOMAN BERG TABAKIN: Michael Hogan  
13 versus Township of Washington, Bergen 2007-267.

14 MR. STEWART: There is an edit on this on  
15 page 5. It has been amended to eliminate footnote  
16 6.

17 The Executive Director respectfully  
18 recommends the Council find that:

19 One, the Custodian failed to respond in  
20 writing to the Complainant's OPRA request, granting  
21 access, denying access, seeking clarification, or  
22 requesting an extension of time within the  
23 statutorily mandated seven business days, as  
24 required by OPRA Section 5.g., and OPRA Section  
25 5.i., resulting in deemed denial of the

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1 Complainant's OPRA request. And that's Kelley  
2 versus Township of Rockaway, GRC Complaint No.  
3 2007-11, October 2007.

4 Two, notwithstanding the Custodian's  
5 deemed denial, the Custodian certified that no  
6 records responsive to the Complainant's request  
7 exist, and the Complainant has failed to provide  
8 any evidence to contradict the Custodian's  
9 certification; therefore, the requested record  
10 cannot be released, and there was unlawful denial  
11 of access.

12 See, Pusterhofer versus NJ Department of  
13 Education, GRC Complaint No. 2005-49, July 2005,

14 wherein the Council determined that, because the  
15 Custodian certified that no records existed, no  
16 denial of access occurred.

17 Three, although the Custodian's  
18 insufficient response to the Complainant's OPRA  
19 request resulted in a deemed denial of access to  
20 the records relevant to this complaint because the  
21 Custodian certified in her SOI that no records  
22 responsive to the Complainant's request exist.

23 It is concluded that the Custodian's  
24 actions do not rise to the level of a knowing and  
25 willful violation of OPRA and unreasonable denial  
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1 of access under the totality of the circumstances.  
2 However, the custodian's actions appear to be  
3 negligent and heedless, since she is vested with  
4 the legal responsibility of granting and denying  
5 access in accordance with the law.

6 CHAIRWOMAN BERG TABAKIN: Motion?

7 MS. FORSYTH: So moved.

8 MS. KOVACH: Second.

9 MS. HAIRSTON: Robin Berg Tabakin?

10 CHAIRWOMAN BERG TABAKIN: Yes.

11 MS. HAIRSTON: Janice Kovach?

12 MS. KOVACH: Yes.

13 MS. HAIRSTON: Kathryn Forsyth?

14 MS. FORSYTH: Yes.

15 MS. HAIRSTON: David Fleisher?

16 MR. FLEISHER: Yes.

17 CHAIRWOMAN BERG TABAKIN: Dale Baranoski  
18 versus Township of Hamilton, Mercer County,  
19 2007-268.

20 MR. STEWART: The Executive director  
21 respectfully recommends the Council find that:

22 Because the Custodian lawfully redacted  
23 the information contained on the arrest reports,  
24 which is not expressly disclosable pursuant to OPRA  
25 Section 3.b., and OPRA Section 1.1., and provided  
0025

1 the Complainant with such lawfully redacted copies  
2 of the requested arrest reports and provided  
3 certified conformation of compliance, pursuant to  
4 NJ Court Rules 1:4-4, to the Executive Director  
5 within five business days of receiving the  
6 Council's February 27, 2008 Interim Order, as  
7 extended, the Custodian has complied with Council's  
8 May 28, 2008 Interim Order.

9 CHAIRWOMAN BERG TABAKIN: Motion?

10 MS. KOVACH: So moved.

11 MS. FORSYTH: Second.

12 MS. HAIRSTON: Robin Berg Tabakin?

13 CHAIRWOMAN BERG TABAKIN: Yes.

14 MS. HAIRSTON: Janice Kovach?

15 MS. KOVACH: Yes.

16 MS. HAIRSTON: Kathryn Forsyth?

17 MS. FORSYTH: Yes.

18 MS. HAIRSTON: David Fleisher?

19 MR. FLEISHER: Yes.  
20 CHAIRWOMAN BERG TABAKIN: Z.T. versus  
21 Bernards Township Board of Education, Somerset,  
22 2007-277.

23 MS. ZIEGLER-SEARS: There is an edit to  
24 this one on page 3; footnote 7 has been deleted.  
25 The Executive Director respectfully

0026

1 recommends the Council find that:

2 One, the Custodian's failure to respond in  
3 writing to the Complainant's OPRA request, either  
4 granting access, denying access, seeking  
5 clarification, or requesting an extension of time  
6 within the statutorily mandated seven business days  
7 result in a deemed denial of the Complainant's OPRA  
8 request, pursuant to Section 5.g., OPRA Section  
9 5.i., and Kelley versus Township of Rockaway, GRC  
10 Complaint No. 2007-11, October 2007.

11 Two, based upon inadequate evidence in  
12 this matter, the GRC is unable to determine whether  
13 the Complainant's requests are valid OPRA requests,  
14 and whether the original Custodian unlawfully  
15 denied access to the requested records. Therefore,  
16 this complaint should be referred to the Office of  
17 Administrative Law for a hearing to resolve the  
18 facts.

19 Three, because the Custodian failed to  
20 respond to Complainant's OPRA request, and failed  
21 to respond to the GRC'S request for a statement of  
22 information in this matter, it is possible that the  
23 custodian's actions were intentional and deliberate  
24 with knowledge of their wrongfulness, and not  
25 merely negligent, heedless, or unintentional.

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1 As such, this complaint should be referred  
2 to the Office of Administrative Law for  
3 determination of whether the Custodian knowingly  
4 and willfully violated OPRA and unreasonably denied  
5 access under the totality of the circumstances

6 CHAIRWOMAN BERG TABAKIN: Motion?

7 MS. FORSYTH: So moved.

8 MR. FLEISHER: Second.

9 MS. HAIRSTON: Robin Berg Tabakin?

10 CHAIRWOMAN BERG TABAKIN: Yes.

11 MS. HAIRSTON: Janice Kovach?

12 MS. KOVACH: Yes.

13 MS. HAIRSTON: Kathryn Forsyth?

14 MS. FORSYTH: Yes.

15 MS. HAIRSTON: David Fleisher?

16 MR. FLEISHER: Yes.

17 CHAIRWOMAN BERG TABAKIN: These next two  
18 cases we will do together. Stephen Jung versus  
19 Borough of Roselle, Union, 2007-299, and Joseph  
20 O'Halloran versus Borough of Roselle Union  
21 2007-307.

22 MS. LOWNIE: I just want to note that  
23 these two cases were combined at the request of the

24 party and the Office of Administrative Law.  
25 The Executive Director respectfully

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1 recommends the Council find that:

2 One, the Administrative Law Judge's  
3 Initial Decision dated November 18, 2008 shall be  
4 modified to the extent that the Custodian's civil  
5 penalty shall be paid to the State of New Jersey  
6 General Treasury, care of GRC. The Council accepts  
7 the remainder of said decision as written

8 Two, the Custodian shall comply with the  
9 portion of the Administrative Law Judge's Initial  
10 Decision, which orders the Custodian to provide the  
11 requested records to the Complainant's within five  
12 business days from receipt of the Council's Interim  
13 Order, with appropriate redactions, including a  
14 detailed document index, explaining the lawful  
15 basis for each redaction, and simultaneously  
16 provide certified confirmation of compliance in  
17 accordance with NJ Court Rule 1:4-4, to the  
18 Executive Director.

19 CHAIRWOMAN BERG TABAKIN: Motion?

20 MS. FORSYTH: So moved

21 MS. KOVACH: Second.

22 MS. HAIRSTON: Robin Berg Tabakin?

23 CHAIRWOMAN BERG TABAKIN: Yes.

24 MS. HAIRSTON: Janice Kovach?

25 MS. KOVACH: Yes.

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1 MS. HAIRSTON: Kathryn Forsyth?

2 MS. FORSYTH: Yes.

3 MS. HAIRSTON: David Fleisher?

4 MR. FLEISHER: Yes.

5 CHAIRWOMAN BERG TABAKIN: James Doyle  
6 versus City of Hoboken, Hudson, 2007-312.

7 MS. KEYS: There is an edit on page 5,  
8 the removal of footnote number 7.

9 The Executive Director respectfully  
10 recommends the Council find that:

11 One, because the Custodian did not  
12 provide the Complainant with a written response to  
13 his OPRA request until the 46th business day after  
14 receipt of same, the Custodian violated Section  
15 5.g., and 5.i., of OPRA.

16 The Custodian's failure to respond within  
17 seven business days results in a deemed denial of  
18 the Complainant's OPRA request pursuant to Section  
19 5.g., and 5.i., of OPRA, and Kelley versus Township  
20 of Rockaway, GRC Complaint No. 2007-11, October  
21 2007.

22 Two, because the Complainant withdrew Item  
23 No. 1 of his complaint, and the Custodian has  
24 certified that he made the records identified as  
25 responsive to Item No. 2 of the OPRA request

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1 available to the Complainant, the Custodian has  
2 provided access to all records responsive to the

3 request as required by Section 1 of OPRA.  
4 Three, the Custodian's failure to respond  
5 in writing to the Complainant's OPRA request,  
6 either granting access, denying access, seeking  
7 clarification, or requesting an extension of time  
8 within the statutorily mandated seven business  
9 days, appears negligent and heedless, since he is  
10 vested with the legal responsibility of providing a  
11 correct and lawful basis for denying access to  
12 government records within seven business days as  
13 mandated by Section 5.g., and 5.i. of OPRA.

14 CHAIRWOMAN BERG TABAKIN: Thank you.  
15 Motion?

16 MS. FORSYTH: So moved.

17 MS. KOVACH: Second.

18 MS. HAIRSTON: Robin Berg Tabakin?

19 CHAIRWOMAN BERG TABAKIN: Yes.

20 MS. HAIRSTON: Janice Kovach?

21 MS. KOVACH: Yes.

22 MS. HAIRSTON: Kathryn Forsyth?

23 MS. FORSYTH: Yes.

24 MS. HAIRSTON: David Fleisher?

25 MR. FLEISHER: Yes.

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1 CHAIRWOMAN BERG TABAKIN: Paula DeLuca  
2 versus City of Ventnor, Atlantic, 2008-08.

3 MR. CARUSO: I do want to point out that  
4 there has been an edit made on page 10 on the last  
5 paragraph, first sentence, which begins with, in  
6 the matter before the Council, both to Mag  
7 Entertainment. So now it should read, in the  
8 matter before the Council, which is similar to New  
9 Jersey Builders Association, supra.

10 The Executive Director respectfully  
11 recommends the Council find that:

12 One, there is no violation of the  
13 statutorily required response time, because the  
14 Complainant waived the statutorily mandated seven  
15 business day time frame to respond. This waiver by  
16 the Complainant presumably also applies to the  
17 immediate access records.

18 Two, based upon the Appellate Division's  
19 decision in New Jersey Builders Association versus  
20 New Jersey Council on affordable housing, Appellate  
21 Division 2007, the Complainant's voluminous  
22 November 23, 2007 OPRA request, a 44 paragraph  
23 request including numerous records spanning nearly  
24 10 years, is not a valid OPRA request, because it  
25 bears no resemblance to the record request

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1 envisioned by the Legislature, which is one  
2 submitted on a form that provides space for a brief  
3 description of the record sought ID at 179.

4 See, also, Vessio versus Department of  
5 Community Affairs Division of Fire Safety, GRC  
6 Complaint No. 2007-63, May 2007, Caggiano versus  
7 Borough of Stanhope, Sussex County, GRC Complaint

8 No. 2006-220, September 2007, MAG Entertainment,  
9 LLC versus Division of Alcoholic Beverage Control,  
10 Appellate Division 2005, and Bent versus Stafford  
11 Police Department, Appellate Division 2005.

12 Three, the handwritten notes of the City  
13 of Vetnor representatives at a particular meeting  
14 held during the period of January 2003 to August  
15 2003 are not subject to disclosure, because they  
16 are not a public record pursuant to O'Shea versus  
17 West Milford Board of Education, Appellate Division  
18 2007.

19 CHAIRWOMAN BERG TABAKIN: Any questions on  
20 this? Motion?

21 MS. FORSYTH: So moved.

22 MR. FLEISHER: Second.

23 MS. HAIRSTON: Robin Berg Tabakin?

24 CHAIRWOMAN BERG TABAKIN: Yes.

25 MS. HAIRSTON: Janice Kovach?

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1 MS. KOVACH: Yes.

2 MS. HAIRSTON: Kathryn Forsyth?

3 MS. FORSYTH: Yes.

4 MS. HAIRSTON: David Fleisher?

5 MR. FLEISHER: Yes.

6 CHAIRWOMAN BERG TABAKIN: Tina Renna  
7 versus County of Union, 2008-41.

8 MS. LOWNIE: The Executive Director  
9 respectfully recommends the Council find that:

10 One, because the Complainant's requests  
11 are not requests for identifiable government  
12 records, and because the Custodian is not required  
13 to conduct research in response to a request, the  
14 requests are invalid, and the Custodian has not  
15 unlawfully denied access to the requested records  
16 pursuant to MAG Entertainment, LLC versus Division  
17 of Alcoholic Beverage Control, Appellate Division  
18 2005, Bent versus Stafford Police Department,  
19 Appellate Division 2005, New Jersey Builders  
20 Association versus New Jersey Council of Affordable  
21 Housing, Appellate Division 2007, Schuler versus  
22 Borough of Bloomsbury, GRC Complaint No. 2007-151,  
23 March 2008, and Donato versus Township of Union,  
24 GRC Complaint No. 2005-182, February 2007.

25 Two, because the Complainant's requests  
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1 are invalid, and the Custodian has not unlawfully  
2 denied access to the requested records pursuant to  
3 MAG Entertainment, LLC versus Division of Alcoholic  
4 Beverage Control Appellate Division 2005, Bent  
5 versus Stafford Police Department Appellate  
6 Division 2005, New Jersey Builders Association  
7 versus New Jersey Council of Affordable Housing,  
8 Appellate Division 2007, Schuler versus Borough of  
9 Bloomsbury, GRC Complaint No. 2007-151, March 2008,  
10 and Donato versus Township of Union, GRC Complaint  
11 No. 2005-182 February 2007, it is concluded that  
12 neither the Custodian's nor the Custodian Council's

13 actions rise to the level of a knowing and willful  
14 violation of OPRA and unreasonable denial of access  
15 under the totality of the circumstances.

16 Three, the Complainant is not a prevailing  
17 party entitled to an award of reasonable attorney's  
18 fees pursuant to OPRA Section 6, Teeters versus  
19 DYFS, Appellate Division 2006, and Mason versus  
20 City of Hoboken and City Clerk of the City of  
21 Hoboken, New Jersey Superior Court 2008.

22 CHAIRWOMAN BERG TABAKIN: Motion?

23 MS. KOVACH: So moved.

24 MR. FLEISHER: Second.

25 MS. HAIRSTON: Robin Berg Tabakin?

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1 CHAIRWOMAN BERG TABAKIN: Yes.

2 MS. HAIRSTON: Janice Kovach?

3 MS. KOVACH: Yes.

4 MS. HAIRSTON: Kathryn Forsyth?

5 MS. FORSYTH: Yes.

6 MS. HAIRSTON: David Fleisher?

7 MR. FLEISHER: Yes.

8 CHAIRWOMAN BERG TABAKIN: Lewis Springer,  
9 Jr., versus New Jersey Department of Treasury  
10 Division of Casino Control Commission, 2008-45.

11 MS. LOWNIE: I just want to note that the  
12 footnote on page 6 has been deleted.

13 The Executive Director respectfully  
14 recommends that the Council find that:

15 One, because the Custodian provided the  
16 Complainant with a written response to his request  
17 within the statutorily mandated seven business days  
18 in which the Custodian denied access to the  
19 Complainant's request, the Custodian properly  
20 responded to said request pursuant to OPRA Section  
21 5.g., and 5.i.

22 Two, pursuant to Paff versus New Jersey  
23 Department of Labor Board of Review, Appellate  
24 Division 2005, the GRC must conduct an in camera  
25 review of the requested records, specifically three

0036

1 E-mails authored by the Complainant, to determine  
2 the validity of the Custodian's assertion that the  
3 records constitute advisory, consultative, or  
4 deliberative material, which is exempt from  
5 disclosure pursuant to OPRA 1.1 and/or whether said  
6 records are exempt from disclosure pursuant to the  
7 Casino Control Act.

8 Three, the Custodian must deliver to the  
9 Council, in a sealed envelope, nine copies of the  
10 requested unredacted documents, in number two  
11 above, a document or redaction index, as well as a  
12 legal certification from the Custodian, in  
13 accordance with New Jersey Court Rule 1:4-4, that  
14 the documents provided are the documents requested  
15 by the Council for the in camera inspection.

16 Such delivery must be received by the GRC  
17 within five business days from receipt of the

18 Council's Interim Order.  
19 Four, because the Complainant failed to  
20 identify specific government records, and because  
21 the Custodian is not required to conduct research  
22 in response to an OPRA request, the Complainant's  
23 request for any and all E-mails is invalid under  
24 OPRA, and the Custodian has not unlawfully denied  
25 access to the requested E-mails pursuant to Mag

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1 Entertainment, LLC versus Division of Alcoholic  
2 Beverage Control, Appellate Division 2005, Bent  
3 versus Stafford Police Department, Appellate  
4 Division 2005, New Jersey Builders Association  
5 versus New Jersey Council of Affordable Housing,  
6 Appellate Division 2007, Schuler versus Borough of  
7 Bloomsbury, GRC Complaint No. 2007-151, March 2008,  
8 and Donato versus Township of Union, GRC Complaint  
9 No. 2005-182, February 2007.

10 Five, the issue of whether the Custodian  
11 violated the New Jersey Casino Control Act, and/or  
12 the New Jersey State Constitution does not fall  
13 under the authority of the GRC, and is not governed  
14 by OPRA pursuant to OPRA 7.b., Allegretta versus  
15 Borough of Fairview, GRC Complaint No. 2005-132,  
16 December 2006, and Donato versus Borough of Emerson  
17 GRC Complaint No. 2005-125, March 2007.

18 Six, the Council defers analysis of  
19 whether the Custodian knowingly and willfully  
20 violated OPRA and unreasonably denied access under  
21 the totality of the circumstances pending the  
22 outcome of the Council's in camera review.

23 CHAIRWOMAN BERG TABAKIN: Thank you.

24 Motion?

25 MR. FLEISHER: So moved.

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1 MS. FORSYTH: Second.

2 MS. HAIRSTON: Robin Berg Tabakin?

3 CHAIRWOMAN BERG TABAKIN: Yes.

4 MS. HAIRSTON: Janice Kovach?

5 MS. KOVACH: Yes.

6 MS. HAIRSTON: Kathryn Forsyth?

7 MS. FORSYTH: Yes.

8 MS. HAIRSTON: David Fleisher?

9 MR. FLEISHER: Yes.

10 CHAIRWOMAN BERG TABAKIN: Okay, we called  
11 Edward Oskay. Laure Zucker versus Bergen County  
12 Improvement Authority, 2008-68.

13 MR. STEWART: The Executive Director  
14 respectfully recommends the Council find that:

15 One, pursuant to OPRA Section 6, the  
16 Custodian has not carried his burden of proving a  
17 lawful denial of access to the requested records,  
18 because such records are payroll records subject to  
19 public access pursuant to OPRA Section 10.

20 See, Geral Wimer versus Township of  
21 Middletown, GRC Complaint No. 2004-22, August  
22 2005.

23 Two, because the Complainant's request for  
24 Item 2 failed to identify with reasonable clarity  
25 those records that were desired pursuant to Bent

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1 versus Stafford, Appellate Division 2005, and  
2 because a Custodian is required to disclose only  
3 identifiable government records pursuant to MAG  
4 Entertainment, LLC versus Division of Alcoholic  
5 Beverage Control, Appellate Division 2005, the  
6 Custodian is under no lawful duty pursuant to OPRA  
7 Section 6 to disclose the records requested in Item  
8 2.

9 Three, because the Custodian certified  
10 that Mr. Rudolph began employment with the Bergen  
11 County Improvement Authority in 2007, and there is  
12 no record responsive to the Complainant's request  
13 for 2006, and because the Complainant has failed to  
14 provide any evidence to contradict the Custodian's  
15 certification, the requested record for 2006 cannot  
16 be disclosed, and there was not unlawful denial of  
17 access with respect to that portion of the record.

18 See, Pusterhofer versus New Jersey  
19 Department of Education, GRC complaint No. 2005-49,  
20 July 2005.

21 Four, the Custodian shall disclose Elnatan  
22 Rudolph's time record for the year 2007 from the  
23 date of hire to the date of request, December 4,  
24 2007, with all appropriate redactions, if any.

25 If any portions of the record are

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1 redacted, the Custodian must provide a redaction  
2 index detailing the nature of the information  
3 redacted, and the lawful basis for the redactions.

4 Five, the Custodian shall comply with Item  
5 4 above within five business days from receipt of  
6 the Council's Interim Order with appropriate  
7 redactions, if any, including a detailed document  
8 index explaining the lawful basis for each  
9 redaction, and simultaneously provide certified  
10 confirmation of compliance, in accordance with New  
11 Jersey Court Rule 1:4-4, to the Executive  
12 Director.

13 Six, the Council defers analysis of  
14 whether the Custodian knowingly and willfully  
15 violated OPRA, and unreasonably denied access under  
16 the totality of the circumstances, pending the  
17 Custodian's compliance with the Council's Interim  
18 Order.

19 CHAIRWOMAN BERG TABAKIN: Thank you.  
20 Motion?

21 MS. KOVACH: So moved.

22 MS. FORSYTH: Second.

23 MS. HAIRSTON: Robin Berg Tabakin?

24 CHAIRWOMAN BERG TABAKIN: Yes.

25 MS. HAIRSTON: Janice Kovach?

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1 MS. KOVACH: Yes.

2 MS. HAIRSTON: Kathryn Forsyth?  
3 MS. FORSYTH: Yes.  
4 MS. HAIRSTON: David Fleisher?  
5 MR. FLEISHER: Yes.  
6 CHAIRWOMAN BERG TABAKIN: Gerald Naples  
7 versus New Jersey Motor Vehicle Commission,  
8 2008-97.  
9 MR. CARUSO: The Executive Director  
10 respectfully recommends the Council finds that:  
11 One, the process of requesting MVC records  
12 under DPPA, which is the Drivers Policy Protection  
13 Act, does not fall under the authority of the GRC,  
14 and is not governed by OPRA pursuant to Section  
15 7.b. of OPRA.  
16 See, Richard G. Rader versus Township of  
17 Willingboro Burlington, GRC Complaint No. 2007-239,  
18 June 2008.  
19 Two, because the Complainant's multiple  
20 records requests, pursuant to DPPA, were not valid  
21 OPRA requests, this complaint is without reasonable  
22 factual basis pursuant to Section 5.f. of OPRA,  
23 Section 5.g. of OPRA, Advisory Opinion 2006-01, and  
24 Megargal versus New Jersey Department of Military  
25 and Veteran's Affairs, GRC Complaint No. 2007-250,  
0042  
1 October 2007.  
2 CHAIRWOMAN BERG TABAKIN: Motion?  
3 MS. KOVACH: So moved.  
4 MR. FLEISHER: Second.  
5 MS. HAIRSTON: Robin Berg Tabakin?  
6 CHAIRWOMAN BERG TABAKIN: Yes.  
7 MS. HAIRSTON: Janice Kovach?  
8 MS. KOVACH: Yes.  
9 MS. HAIRSTON: Kathryn Forsyth?  
10 MS. FORSYTH: Yes.  
11 MS. HAIRSTON: David Fleisher?  
12 MR. FLEISHER: Yes.  
13 CHAIRWOMAN BERG TABAKIN: Okay. There are  
14 five Administrative Complaint Council  
15 Adjudications. Can I have a motion to accept  
16 those, please?  
17 MR. FLEISHER: So moved.  
18 CHAIRWOMAN BERG TABAKIN: I'm sorry, there  
19 are four.  
20 MS. FORSYTH: There are five.  
21 MR. FLEISHER: So moved as five.  
22 MS. HAIRSTON: Robin Berg Tabakin?  
23 CHAIRWOMAN BERG TABAKIN: Yes.  
24 MS. HAIRSTON: Janice Kovach?  
25 MS. KOVACH: Yes.  
0043  
1 MS. HAIRSTON: Kathryn Forsyth?  
2 MS. FORSYTH: Yes.  
3 MS. HAIRSTON: David Fleisher?  
4 MR. FLEISHER: Yes.  
5 CHAIRWOMAN BERG TABAKIN: There were no  
6 complaints reconsidered. Were there any complaints

7 adjudicated in Superior Court?  
8 MS. GORDON: No.  
9 CHAIRWOMAN BERG TABAKIN: Was there  
10 anything from the Executive Branch?  
11 MS. FORSYTH: No, nothing from the  
12 Executive Branch.  
13 CHAIRWOMAN BERG TABAKIN: Thank you. At  
14 this time, anybody wishing to make comment is  
15 invited to step up to the table and speak for five  
16 minutes. Is there anybody interested in saying  
17 anything?  
18 MS. ABS: I am.  
19 CHAIRWOMAN BERG TABAKIN: Please step up  
20 to the table. State your name and address.  
21 MS. ABS: My name is Heidi Abs, I'm the  
22 township clerk for the Township of Middletown. One  
23 Kings Highway, Middletown, New Jersey. I actually  
24 just have a few questions for the Council. One was  
25 based on the Mason versus the City of Hoboken.

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1 There was a 45 day portion of that case,  
2 Appellate Division, for filing a complaint of a  
3 records denial, and I'm wondering if there is such  
4 a case where the complaint is filed outside of the  
5 45-day ruling, if the Complainant still is allowed  
6 to go through the process with the GRC?  
7 MS. ALLEN: There is no statute of  
8 limitations for filing a denial of access complaint  
9 with the Government Records Council. So there  
10 really is nothing that would prohibit a  
11 Complainant, who was time barred from filing such a  
12 complaint in Superior Court, from filing such a  
13 complaint before the GRC.  
14 MS. ABS: So with that case being, I  
15 guess, appealed in the Supreme Court Division, it  
16 doesn't affect that the case could be heard before  
17 the state agency?  
18 MS. ALLEN: Correct.  
19 MS. ABS: Even though you cite that case  
20 in your decision.  
21 MS. ALLEN: It's the law for right now  
22 until such time or in such case as the Supreme  
23 Court overturns that decision.  
24 MS. ABS: Overturns it?  
25 MS. ALLEN: Yes. You mentioned that it

0045

1 is on appeal to the Supreme Court.  
2 MS. ABS: No, that was the appeal.  
3 MS. ALLEN: Then it is the law of the  
4 land. Complainants who want to bring a complaint  
5 in Superior Court have 45 days from the denial of  
6 access to do so.  
7 MS. ABS: Right. And outside of that 45  
8 days?  
9 MS. ALLEN: Outside of that 45 days,  
10 they can still come before the GRC; and there is no  
11 statute of limitations on the complaints before

12 us.

13 MS. ABS: My next question is: If there  
14 is a complaint brought to the GRC, is there an  
15 opportunity for mediation prior to getting through  
16 the process?

17 MS. ALLEN: Yes. We are required by the  
18 statute to provide an opportunity for mediation to  
19 the parties; that's done in every case.

20 MS. ABS: When is that provided?

21 MS. ALLEN: As soon as we receive the  
22 complaint.

23 MS. ABS: But the clerk still has to then  
24 respond within the five days to all of the requests  
25 of the GRC, even though there is no mediation that

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1 was done?

2 MS. ALLEN: We are required to offer  
3 mediation. If one of the parties does not agree to  
4 mediation, it goes immediately to the adjudication  
5 process where the complaint is assigned to a case  
6 manager. And the case manager then sends out a  
7 request for statement of information to the  
8 Custodian. That's the time when the Custodian has  
9 five business days to respond to that.

10 MS. ABS: Is there ever, I guess, an  
11 opportunity for a request for an extension to the  
12 five days?

13 MS. ALLEN: Sure. For good cause shown,  
14 we routinely grant extensions of that time.

15 MS. ABS: Now, the GRC, I guess,  
16 corresponds with Custodians through E-mail?

17 MS. ALLEN: Yes.

18 MS. ABS: Is it email only?

19 MS. ALLEN: No, we do send letters by  
20 certified mail or by UPS overnight.

21 MS. ABS: So when a complaint comes before  
22 the Council or submitted to the Government Records  
23 Council, the Government Records Council then  
24 notifies the Custodian via mail, U.S. mail?

25 MS. ALLEN: Correct.

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1 MS. ABS: And E-mail, I gather?

2 MS. ALLEN: Correct. Usually, the case  
3 manager will reach out to the Custodian by E-mail  
4 and say, I have been assigned to this case. And  
5 then a copy of the denial of access complaint is  
6 also sent via overnight mail to the Custodian.

7 MS. ABS: In my case, I'm just trying to  
8 think, we didn't receive anything via certified  
9 mail, UPS, or even by mail; we received a fax.  
10 And --

11 MS. ALLEN: We sometimes do that.

12 MS. ABS: -- prior to that, it was in  
13 E-mail. So it was sent, I guess, on December 2nd  
14 to our attention, via E-mail. E-mail was not  
15 received until December 15th, due to it being only  
16 sent to the deputy clerk, and she was out on

17 approved-time-off. And now we are facing a five-  
18 day interim order, I guess, to produce what we need  
19 to for the GRC.

20 And I'm just wondering, since we didn't  
21 receive it via mail, I would have to put it in  
22 writing to you for an extension to the five day?

23 MS. ALLEN: Contact your case manager  
24 and explain your situation.

25 MS. ABS: Okay. I guess I have one more  
0048

1 question. Do you have any cases that you can refer  
2 me to from the GRC regarding public employees or  
3 public appointees home addresses and expectation of  
4 privacy?

5 MS. ALLEN: There are a number of cases  
6 on our website that you can search by home  
7 address. You can search by the subject matter,  
8 just type in home address. There are a number of  
9 cases that discuss the disclosability of home  
10 addresses. Off the top of my head, I can't recall  
11 which ones specifically deal with the public  
12 employees.

13 MS. LOWNIE: I do. If after the meeting  
14 you can give me your E-mail address, I do have a  
15 list on six prior decisions regarding home  
16 addresses. I don't know if they are specifically  
17 for public employees' home addresses, or just home  
18 address in general, but I can send them.

19 MS. ABS: Sure, okay, because I know I did  
20 the search, and I didn't find anything relative to  
21 public employees, police officers, or any kind of  
22 public appointees. So I know there are cases  
23 relevant to private citizens submitting an  
24 expectation of privacy, but I was just curious if  
25 you could point me in the direction.

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1 MS. ALLEN: I would also suggest that  
2 you work closely with your municipal attorney on  
3 developing that particular aspect of the argument,  
4 and put that in writing to the GRC as part of your  
5 case submissions.

6 MS. ABS: Thank you.

7 CHAIRWOMAN BERG TABAKIN: Thank you.  
8 Anyone else? Well, in that case, everyone have a  
9 wonderful holiday season. Our next meeting is  
10 January 28th, I believe. And can I have a motion  
11 to close?

12 MR. FLEISHER: So moved.

13 MS. FORSYTH: Second.

14 MS. HAIRSTON: Robin Berg Tabakin?

15 CHAIRWOMAN BERG TABAKIN: Yes.

16 MS. HAIRSTON: Janice Kovach?

17 MS. KOVACH: Yes.

18 MS. HAIRSTON: Kathryn Forsyth?

19 MS. FORSYTH: Yes.

20 MS. HAIRSTON: David Fleisher?

21 MR. FLEISHER: Yes.

22 CHAIRMAN: We are adjourned.  
23 (Whereupon, the proceeding  
24 concluded at 11:32 a.m.)  
25

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1 CERTIFICATE  
2 I, JUSTIN DAVIS, certify that the foregoing is  
3 a true and accurate transcript of the testimony as  
4 taken stenographically by and before me at the  
5 time, place and on the date herein before set  
6 forth.  
7 I DO FURTHER CERTIFY that I am neither a  
8 relative nor employee nor attorney nor counsel of  
9 any of the parties to this action, and that I am  
10 neither a relative nor employee of such attorney or  
11 counsel, and that I am not financially interested  
12 in the action.

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15 Justin Davis

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